

118 CMR 3.00: REPORTERS

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3.01: Scope and Purpose

118 CMR 3.00 establishes the requirements for reporting abuse to the Commission, the penalties for not reporting and the protections afforded to reporters of abuse and participants in investigations conducted pursuant to M.G.L. c. 19C.

3.02: Contents of Reports of Abuse

Each oral and written report of abuse made to the Commission shall contain information as deemed appropriate and relevant by the Commission.

3.03: Mandated Reporters

- (1) A mandated reporter as defined by M.G.L. c. 19C, § 1 shall immediately make an oral report to the Commission's Hotline of suspected abuse when the mandated reporter based upon the presentation of facts has formed a suspicion that a reportable condition may exist.
- (2) A mandated reporter is required to report suspected abuse without regard to professional privileges established by statute, code of ethics or by court decision. However, no mandate to report exists after a competent person with a disability invokes a privilege established by law or professional code and thereby requests that a report not be made. The invocation of such a privilege by a competent person with a disability shall convert a mandated reporter to a non-mandated reporter.
- (3) A reporter, whether mandated or not, shall send to the Commission a written report regarding the existence of a reportable condition as prescribed by M.G.L. c. 19C, § 10. In all events in which the reportable condition being reported is of a death caused by abuse, the reporter, whether mandated or not, including but not limited to, an investigator conducting an investigation, in addition to filing an oral report with the Commission, shall file a written report with the Commission, the Attorney General, the Office of the Chief Medical Examiner and the District Attorney for the county in which the death occurred.
- (4) It is the personal responsibility of each mandated reporter to insure that he makes a report to the Commission when he has formed a suspicion that a reportable condition exists based upon the facts known to him. However, when more than one mandated reporter is aware of the same situation of suspected abuse, one mandated reporter may report on behalf of all the mandated reporters by making a report which contains the names of all the mandated reporters. If such a report by multiple reporters is received by the Commission, that single report shall satisfy the reporting requirement for all the named mandated reporters. It shall be the responsibility of each of the mandated reporters to insure that such a report is actually made on his/her behalf in order to satisfy his/her responsibility to report pursuant to M.G.L. c. 19C, § 10.

3.04: Non-mandated Reporters

Any person who is not a mandated reporter and has a suspicion based upon known facts that a reportable condition may exist, may make a report to the Commission pursuant to the requirements contained in 118 CMR. Said reporter shall be referred to in 118 CMR as a “non-mandated reporter.”

3.05: Reports Involving Deaths of Individuals with Disabilities Whose Caretaker Was a State Agency, an Agency of Any Subdivision of Massachusetts or a Private Entity Contracting with Massachusetts

(1) Upon the death of a person with a disability, even if there is no suspicion that the death is the result of abuse, whose caretaker was a state agency, an agency of any subdivision of Massachusetts or a private entity contracting with Massachusetts, the caretaker agency is required to immediately provide an oral report of said death to the Commission's Hotline by telephone, and to provide within 24 hours a written report, to the Commission and to law enforcement officials.

(2) Each oral and written report of a death made to the Commission shall contain information as deemed appropriate and relevant by the Commission.

3.06: Reporter Immunity

(1) A mandated reporter shall not be liable in any civil or criminal action by reason of having made a report under M.G.L. c. 19C; provided, however, that if said report is a false report, the protections provided by M.G.L. c. 19C, § 11 shall not be available to the mandated reporter.

(2) A non-mandated reporter shall not be liable in any civil or criminal action by reason of having made a report under M.G.L. c. 19C if such report is made in good faith; provided, however, that if said report is a false report, the protections provided by M.G.L. c. 19C, § 11 shall not be available to the non-mandated reporter.

(3) In no event, shall a person who abuses a person with a disability be exempt from civil or criminal liability for such abuse by reason of his/her reporting such abuse.

3.07: Penalties for Failure of a Mandated Reporter to Report

(1) Upon completion of an investigation and determination by the Commission that:

- (a) a mandated reporter has failed to report either a reportable condition or a death when required; and
- (b) the person with a disability has not knowingly invoked a privilege in accordance with M.G.L. c. 19C, § 10

(2) The Commission may cause a fine of up to \$1,000.00 to be imposed upon a mandated reporter who fails to comply with the requirements of M.G.L. c. 19C, § 10.

3.08: Penalties for Retaliation Against Reporters

(1) Any person who is discharged, disciplined or in any manner discriminated against for filing a report with or providing information to the Commission or to any agency conducting an investigation under M.G.L. c. 19C shall have the right to have the Commission review and, at its discretion, further investigate an allegation of retaliation.

(2) Upon the completion of an investigation and a determination by the Commission that the alleged retaliation occurred by a preponderance of the evidence as a result of the complainant's filing a report with or providing information during an investigation conducted pursuant to M.G.L. c. 19C, the Commission, at its discretion, may:

- (a) request from the Attorney General appointment of Commission's counsel as a Special Assistant Attorney General to prosecute such cases and if so appointed file an application for a complaint at the state District Court for the judicial district in which the alleged violation of M.G.L. c. 19C, § 11 occurred; or

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(b) refer the matter for prosecution to the Attorney General, or the District Attorney for the county where the alleged violation occurred. If the Commission reports a case to the Attorney General or to a District Attorney, consistent with the provisions of M.G.L. c. 19C, § 3 a copy of the Commission's investigation report and all relevant information in the possession of the Commission shall be sent to the Attorney General or to the appropriate District Attorney.

(3) When an individual notifies the Commission of alleged retaliation or provides the Commission with information during the course of an investigation, all information that the individual provides to the Commission, including his/her own identity, shall be maintained as confidential information. Except as otherwise provided for in 118 CMR, the Commission shall not release such information except as provided in 118 CMR 9.00, M.G.L. c. 19C, § 3 and M.G.L. c. 66A.

REGULATORY AUTHORITY

118 CMR 3.00: M.G.L. c. 19C, §§ 3(b), 10 and 11.

NON-TEXT PAGE